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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD BRUCE HAWKINS, RICHARD BERGER, and KEITH KOCHO

Appeal 2009-014883
Application 10/802,589
Technology Center 2400

Before JOSEPH F. RUGGIERO, ERIC B. CHEN, and
BRIAN J. McNAMARA, *Administrative Patent Judges.*

CHEN, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1, 2, and 4-15. Claims 3 and 16-22 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to a playlist of multimedia content generated based on the results of a search algorithm operating on a metadata database connected to a network. The search algorithm utilizes a search vector that is generated using demographic data and consumer profile data, based on a consumer search request. (Abstract.)

Claims 1, 5, and 8 are exemplary, with disputed limitations in italics:

1. A system for generating a playlist of multimedia titles, comprising:

at least one database;

at least one digital processor accessing the database and configured for communicating with a client device over a network, the processor executing logic including:

accessing at least one database containing data representing heterogenous [sic] multimedia content;

generating plural search vectors by:

accessing at least one database containing demographic data;

using the at least one search vector, generating plural playlists and associating the playlist with respective consumers, such that the consumers can access their respective playlists over the network, wherein each playlist is uniquely associated with a respective consumer whose profile was used to generate the playlist;

recalling a playlist for a respective consumer based on a consumer ID identifying the consumer;

presenting the playlist on a client device associated with the respective consumer;

receiving at least one selection from the playlist; and

processing the selection by transmitting to the client device a multimedia stream corresponding to the selection.

5. A system for generating a playlist of multimedia titles, comprising:

at least one database;

at least one digital processor accessing the database and configured for communicating with a client device over a network, the processor executing logic including:

accessing at least one database containing data representing heterogenous [sic] multimedia content;

generating at least one search vector by undertaking at least one of:

accessing at least one database containing data selected from the group consisting of third party marketing data, demographic data, consumer profile data, and consumer search history data; and

using the search vector, generating a playlist and associating the playlist with the consumer, such that the consumer can access the playlist over the network, *wherein the logic comprises signifying whether all content in the playlist is available for playback (playlist is "ready") or is pending (playlist is "incomplete").*

8. A method for generating a multimedia playlist for display thereof to a consumer operating a client device communicating with a network, comprising:

accessing profile data associated with the consumer;

accessing historical search and purchasing data;

retrieving historical search and purchasing data based on the profile data associated with the user;

using retrieved historical search and purchasing data, searching for multimedia content, *the multimedia content not being constrained to be homogenous*; and

generating a playlist based on the searching act.

Claims 1, 2, and 4 stand rejected under 35 U.S.C. § 103(a) as being obvious over Pontenzone (U.S. Patent Application Publication No. 2002/0152278 A1) and Hori (U.S. Patent No. 7,209,942 B1).

Claims 5-7 stand rejected under 35 U.S.C. § 103(a) as being obvious over Pontenzone, Asmussen (U.S. Patent Application Publication No. 2002/0042923 A1) and Hempleman (U.S. Patent No. 6,243,725 B1).

Claims 8-12 and 15 stand rejected under 35 U.S.C. § 103(a) as being obvious over Pontenzone, Asmussen, and Holtz (U.S. Patent Application Publication No. 2002/0053078 A1).

Claims 13 and 14 stand rejected under 35 U.S.C. § 103(a) as being obvious over Pontenzone, Asmussen, Holtz, and Hempleman.

ANALYSIS

Claims 1, 2, and 4

We are unpersuaded by Appellants' arguments (App. Br. 5-6; *see also* Reply Br. 1) that the combination of Pontenzone and Hori would not have rendered obvious independent claim 1, which includes the disputed limitation "presenting the playlist on a client device associated with the respective consumer."

The Examiner found that the listener profiles block 370 of Pontenzone for registered listeners with the ability to view playlist details and add songs to that playlist corresponds to the limitation "presenting the playlist on a client device associated with the respective consumer." (Ans. 5, 12-13; Pontenzone, ¶ [0067]; Fig. 1.)

Under the broadest reasonable interpretation consistent with the Specification, we agree with the Examiner that Pontenzone teaches "presenting the playlist on a client device associated with the respective consumer." A relevant plain meaning of "present" is "to offer to view" or "show." MERRIMAN-WEBSTER'S COLLEGIATE DICTIONARY 921 (10th ed. 1999). Pontenzone relates to a system for managing delivery of content over a network (e.g., songs or music over the Internet) (Abstract), including a listener profiles block 370 used for registered listeners (¶ [0030]; Fig. 1). "A user (e.g., a music manager or a registered listener), associated with a playlist may view the playlist details and add songs to the playlist . . . ." (¶ [0067].) Because the user of Pontenzone can "view the playlist" for added songs and playlist details, Pontenzone therefore, teaches the limitation "presenting the playlist on a client device associated with the respective consumer."

Appellants argue that "the allegedly 'inherent' elements of recalling a playlist for a respective consumer based on a consumer ID identifying the consumer and then presenting the playlist on a client device associated with the respective consumer are not 'necessarily' in Pontenzone." (App. Br. 6; *see also* Reply Br. 1.) However, as discussed previously, because the playlist of Pontenzone can be viewed for added songs and details, Pontenzone expressly teaches the limitation "presenting the playlist."

Thus, we agree with the Examiner that the combination of Pontenzone and Hori would have rendered obvious independent claim 1, which includes the limitation "presenting the playlist on a client device associated with the respective consumer."

We are also unpersuaded by Appellants' arguments (App. Br. 5; *see also* Reply Br. 1-2) that the combination of Pontenzone and Hori would not have rendered obvious independent claim 1, which includes the disputed limitations "receiving at least one selection from the playlist" and "processing the selection by transmitting to the client device a multimedia stream corresponding to the selection."

The Examiner found that streaming music according to the order specified in the playlist of Pontenzone corresponds to the limitations "receiving at least one selection from the playlist" and "processing the selection by transmitting to the client device a multimedia stream corresponding to the selection." (Ans. 13-14; Pontenzone, ¶ [0030].) We agree with the Examiner.

A system front end 300 of Pontenzone that runs on a Web server connected to the Internet includes operating blocks for "a streaming music and meta data engine block 320 which directs the trafficking of streaming broadcasts to listeners." (¶ [0030].) Therefore, Pontenzone teaches the limitation "receiving at least one selection from the playlist." In addition, the system front end 300 of Pontenzone includes "a playlist generator 350 which determines the order of broadcast content." (*Id.*) Therefore, Pontenzone teaches the limitation "processing the selection by transmitting to the client device a multimedia stream corresponding to the selection."

Appellants argue that "the limitations of receiving a selection from the playlist and processing the selection by transmitting to the client device a multimedia stream corresponding to the selection are not even mentioned, since as analyzed above Pontenzone does not in fact allow editing of an active playlist and thus teaches away from Claim 1." (App. Br. 5; *see also*

Reply Br. 1-2.) However, contrary to Appellants' arguments, streaming music according to the order specified by the playlist of Pontenzone corresponds to the limitations "receiving at least one selection from the playlist" and "processing the selection by transmitting to the client device a multimedia stream corresponding to the selection."

Thus, we agree with the Examiner that the combination of Pontenzone and Hori would have rendered obvious independent claim 1, which includes the limitations "receiving at least one selection from the playlist" and "processing the selection by transmitting to the client device a multimedia stream corresponding to the selection."

Accordingly, we sustain the rejection of independent claim 1 under 35 U.S.C. § 103(a). Claims 2 and 4 depend from claim 1, and Appellants have not presented any substantive arguments with respect to these claims. Therefore, we sustain the rejection of claims 2 and 4 under 35 U.S.C. § 103(a), for the same reasons discussed with respect to independent claim 1.

Claims 5-7

We are unpersuaded by Appellants' arguments (App. Br. 6; *see also* Reply Br. 2) that the combination of Pontenzone, Asmussen and Hempleman would not have rendered obvious independent claim 5, which includes the disputed limitation "wherein the logic comprises signifying whether all content in the playlist is available for playback (playlist is 'ready') or is pending (playlist is 'incomplete')."

The Examiner found that the playability validation of Pontenzone for song recording data corresponds to the limitation "wherein the logic

comprises signifying whether all content in the playlist is available for playback (playlist is 'ready') or is pending (playlist is 'incomplete')." (Ans. 7-8, 14-15; Pontenzone, ¶¶ [0067], [0073].) We agree with the Examiner.

The user of Pontenzone can "view the playlist details and add songs to the playlist, provided the song has been properly encoded, i.e. is playable, in all required formats of the system." (¶ [0067].) Therefore, Pontenzone teaches the limitation "whether all content in the playlist is available for playback (playlist is 'ready')." Furthermore, the "system 100 preferably only allows songs to be added to playlists if they are playable in each encoding format specified by system 100." (¶ [0073].) Therefore, Pontenzone teaches the limitation "whether all content in the playlist is . . . pending (playlist is 'incomplete')."

Appellants argue that "[v]alidating that a song on a playlist conforms to all required formats is not at all a signal of whether a playlist is ready or incomplete, but rather merely an indication as to whether any song in isolation has satisfied the validation criteria" (App. Br. 6) and "[t]he examiner has failed to produce evidence that a seeming apple (validation) equals a claimed orange (signifying availability)" (Reply Br. 2). However, the claimed language "signifying whether all content in the playlist is available for playback (playlist is 'ready') or is pending (playlist is 'incomplete')" is broad enough to encompass the validation process of Pontenzone.

Thus, we agree with the Examiner that the combination of Pontenzone, Asmussen and Hempleman would have rendered obvious independent claim 5, which includes the limitation "wherein the logic

comprises signifying whether all content in the playlist is available for playback (playlist is 'ready') or is pending (playlist is 'incomplete')."

Accordingly, we sustain the rejection of independent claim 5 under 35 U.S.C. § 103(a). Claims 6 and 7 depend from claim 5, and Appellants have not presented any substantive arguments with respect to these claims. Therefore, we sustain the rejection of claims 6 and 7 under 35 U.S.C. § 103(a), for the same reasons discussed with respect to independent claim 5.

Claims 8-12 and 15

We are unpersuaded by Appellants' arguments (App. Br. 6-7; *see also* Reply Br. 2) that the combination of Pontenzone, Asmussen and Holtz would not have rendered obvious independent claim 8, which includes the disputed limitation "the multimedia content not being constrained to be homogenous."

The Examiner found that the multimedia or video content of Pontenzone corresponds to the limitation "the multimedia content not being constrained to be homogenous." (Ans. 15; Pontenzone, ¶ [0026].) We agree with the Examiner.

The system of Pontenzone "can also be used for other types of content, such as multimedia or video content" such as "the distribution or streaming of multimedia-based music videos (or songs)." (¶ [0026].) Therefore, Pontenzone teaches heterogeneous content (i.e., multimedia-based music videos or songs) and thus, the limitation "the multimedia content not being constrained to be homogenous."

Appellants argue that the "rejection fails to account for a claim limitation" of "multimedia content . . . not constrained to be homogenous" because "Pontenzone expressly teaches a system that requires its titles to be constrained to homogeneous audio content." (App. Br. 6-7; *see also* Reply Br. 2.) However, contrary to Appellants' arguments, Pontenzone also teaches multimedia-based music videos or songs and therefore, the limitation "the multimedia content not being constrained to be homogenous" (¶ [0026]).

Thus, we agree with the Examiner that the combination of Pontenzone, Asmussen and Holtz would have rendered obvious independent claim 8, which includes the limitation "the multimedia content not being constrained to be homogenous."

Accordingly, we sustain the rejection of independent claim 8 under 35 U.S.C. § 103(a). Claims 9-12 and 15 depend from claim 8, and Appellants have not presented any substantive arguments with respect to these claims. Therefore, we sustain the rejection of claims 9-12 and 15 under 35 U.S.C. § 103(a), for the same reasons discussed with respect to independent claim 8.

Claims 13 and 14

Although Appellants nominally argue the rejection of dependent claims 13 and 14 separately (App. Br. 7), the arguments presented do not point out with particularity or explain why the limitations of the dependent claims are separately patentable. Instead, Appellants summarily allege that "[t]hese claims inherit the patentability of their base claim." (*Id.*) We are not persuaded by these arguments for the reasons discussed with respect to

claim 8, from which claims 13 and 14 depend. Accordingly, we sustain this rejection.

DECISION

The Examiner's decision to reject claims 1, 2, and 4-15 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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